

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

ERNEST SUTTLES,

Plaintiff

v.

**Case No. _____
JURY TRIAL DEMANDED**

UNIVERSITY OF MEMPHIS,

Defendant

**COMPLAINT FOR VIOLATIONS OF TITLE IX,
DENIAL OF FOURTEENTH AMENDMENT DUE PROCESS AND
BREACH OF CONTRACT**

COMES NOW THE PLAINTIFF, ERNEST SUTTLES, by and through undersigned counsel of record, who complains of breach of contract, denial of his Fourteenth Amendment Due Process Rights, and for violations of title IX against the Defendant, University of Memphis and in support thereof would state as follows:

THE NATURE OF THE ACTION

This action arises from an egregious miscarriage of justice against Plaintiff through the University of Memphis' ("the University") flawed and biased Title IX sexual misconduct process, carried out under a presumption of guilt, and willful ignorance of major inconsistencies in the complainant, "Jane Roe's," false allegations of nonconsensual sexual contact against Plaintiff. Concerns with Jane Roe's credibility were never raised by University investigators, nor was her account questioned, and vital witnesses were ignored, because the University of Memphis trains its staff to adopt a trauma-informed approach which discourages the thorough questioning of complainants in the sexual misconduct process to avoid further trauma.

Without sufficient supporting evidence, the University suspended Plaintiff from the campus—who was only 1 year away from completing his Master’s Degree—for a period of time now spanning almost two years. At the time, Plaintiff—who in 2013 was the Glenn Jones Defensive Scout Team Player of the Year, a 2017 Scholar Athlete of the month, a defensive starter for the University of Memphis football team and a member of the winningest recruiting class in the history of Tiger Football, was enrolled and on his way to a degree and a chance at a career in the NFL. As a result of this allegation and suspension, he lost his scholarship, reputation, job prospects and a potential career in the NFL. This lawsuit comes as a result of those losses.

JURISDICTION AND VENUE

1. This Court has federal question, diversity and supplemental jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332 and 28 U.S.C. § 1367 because: (i) the federal law claims arise under the constitution and statutes of the United States; and (ii) the state law claims are so closely related to the federal law claims as to form the same case controversy under Article III of the United States Constitution.
2. This Court has personal jurisdiction over Defendant University of Memphis on the ground that it is conducting business within and is an instrumentality of the State of Tennessee within the jurisdiction and venue of this Court.

PARTIES

3. The Plaintiff Ernest Suttles is a resident and citizen of Shelby County, Tennessee. During all times mentioned herein, he was a student at the University of Memphis and a member of the Football team.

4. The University of Memphis is a publicly funded University in the State of Tennessee. At all times herein it was an instrumentality of the State of Tennessee and is subject to the jurisdiction of this Court.

FACTS

1. Mr. Suttles Background and Financial Aid Agreements with the University.

5. Mr. Ernest Suttles, the Plaintiff, was a highly sought-after football recruit in the high school class of 2013. He originally committed to the University of Nebraska and thereafter transferred to the University of Memphis. From the time he enrolled at the University of Memphis, the institution offered him a series of financial aid agreements, in exchange for his participation on the school's football team.
6. For the 2017-2018 Academic Year the University of Memphis offered the Plaintiff a football scholarship as had been offered every year he had been enrolled. This agreement was signed by both the Director of Athletics on behalf of the University and by Mr. Suttles. The date of this agreement was 7/27/17. As a result of this agreement, the University agreed to provide financial aid to the Plaintiff and agreed to the following conditions and guidelines for that aid in a written financial aid agreement signed by all parties:

University of Memphis Athletic Grant In Aid Guidelines

Athletic grant in aid may be reduced or rescinded during the period of the award if a student athlete is found to have engaged in activities in violation of team, academic, Athletic Department, or University policies, as well as all NCAA rules and regulations.....

NCAA Division I Rules and Regulations Concerning Athletic Aid

15.3.4.2 Reduction or Cancellation Permitted

...(c) engages in serious misconduct warranting substantial disciplinary penalty...

7. Furthermore, NCAA regulations specifically mandate that such a reduction or cancellation of aid may only occur after a student -athlete has been provided an opportunity for a hearing per

Bylaw 15.3.2.3. Ernest Suttles agreed to these terms and conditions and relied upon the promises of the University of Memphis to provide the financial aid and due process protections this agreement expressly stated would exist by playing football for the school after signing this agreement.

8. Pursuant to this agreement, the Plaintiff, Ernest Suttles participated in the University of Memphis Football program and maintained all terms and conditions of his financial aid agreement. On or about October 15, 2017 Plaintiff Ernest Suttles was arrested and charged with rape. This allegation was then and is now, completely false. A woman he had been dating previously, hereinafter referred to as “Jane Roe”, lodged this accusation.¹.
9. After this accusation was made, the Memphis Police Department posted news of this arrest on its Twitter Account. On the date of the arrest, the University of Memphis was scheduled to play the Navy Midshipmen. Mr. Suttles was at the team hotel preparing for the game that morning. He was arrested on this false rape charge at the team hotel and escorted out of the facility by the Memphis Police Department.
10. By 12:00 p.m. on October 15, 2017, before the Navy game had even been completed, the University of Memphis had taken punitive actions against Mr. Suttles, without notice to him or any advance warning or hearing. Clearly, the University of Memphis made a decision regarding Suttles guilt or innocence: It kicked him off the football team summarily by halftime of the Navy game. In doing so, University of Memphis issued the following statement flatly stating that Suttles had committed a violation of the University of Memphis team rules:

“...Ernest Suttles has been dismissed from the University of Memphis football team for a violation of team rules in an off campus incident. As was communicated in an earlier statement, Settles has been removed from campus while this matter is reviewed by the Office of Student Accountability, Outreach and Support for

¹ Jane Roe is a pseudonym.

violations of the UofM Student Code of Conduct. During the ongoing investigation, no additional comments will be made...”

11. On Monday October 16, 2017, before Mr. Suttles had posted his bond on the criminal complaint the University of Memphis issued a “Notice of Complaint” by way of an email to him. This Notice of Complaint advised him of the charge made and of the procedure to contest this allegation.
12. Additionally, on October 16, 2017 the Office for Institutional Equity at the University of Memphis emailed one of the Plaintiff’s professors to explain the reason that he was unable to attend classes. This email clearly stated that he was barred from attending classes due to their investigation, which at that time, had not been completed. In fact, this investigation would never be completed and remains incomplete to this day.
13. One immediate sanction levied by the University of Memphis was to bar Ernest Suttles from attending his classes or even setting foot on the campus of the University of Memphis. This, despite the fact that the accuser, Jane Roe, was not enrolled in ANY of the same classes he was enrolled in, did not frequent any of the buildings he was required to travel to for class and did not share the same major. In fact, shortly after this accusation was levied, Jane Roe left campus and disenrolled from the University of Memphis by the Spring 2018 semester. Nonetheless, the Plaintiff was still was restricted from attending classes or being on the campus of the University of Memphis. These sanctions were never lifted, and the Plaintiff is still not allowed on campus to this day.
14. Pursuant to the Notice of Complaint, the University of Memphis promised to investigate the allegations of rape. The Plaintiff cooperated with this investigation. In furtherance of that cooperation, the Plaintiff informed the University investigators, that his roommate was present at the time of the alleged offense and would provide exculpatory information. This witness’

information would be that no incident occurred in the home on the date alleged by Jane Roe. Inexplicably however, the University's investigators never interviewed this witness before or after imposing what it called, "interim measures" against the Plaintiff, barring him from campus, kicking him off the football team and branding him as a rapist in public.

15. As of Monday January 22, 2018 the University of Memphis and its lead investigator Kenny Anderson were still promising to complete the investigation. He emailed the Plaintiff and advised that the interim sanctions could stay in place even if he completed his report:

Earnest:

I still anticipate completing my report by the end of next week, but I wanted to alert you to the fact that it is not the end of the process necessarily. Both parties will have a right to appeal my findings and that would extend the process and interim measures that are currently in place. Also, if a policy violation was established by the investigation (hypothetically mentioned here only for clarity sake), then the Office of Student Conduct, Outreach and Accountability would determine any sanctions and both parties would also have the right to appeal their decision.

I explain all of that to say that the completion of the process could last an additional month if either party utilizes their appeal rights. Thus, I wanted to provide this information so you could make a fully informed decision regarding your academic options.

Sincerely,

Kenneth P. Anderson
Director | Title IX Coordinator
Office for Institutional Equity

16. This email made it clear to the Plaintiff that there would be no hearing, beyond the initial interview conducted by Mr. Anderson and that he would have to be subjected to the interim sanctions while an appeal was filed, again, before a final adjudication of this complaint. All of this was months after the initial notice of complaint. Finally, even this email was inaccurate because Mr. Anderson NEVER completed his report and there never was an appeal. The case remains open.

2. Policies In Place at the University of Memphis regarding Sexual Misconduct

17. Despite how this investigation was conducted in reality, there was a policy that existed at the University of Memphis which explained its Sexual Misconduct Policy. At the time of the incident the University of Memphis had enacted Policy GE 2031 – Sexual Misconduct and Domestic Violence Policy. This policy has scant information in it to protect the due process rights of the accused.
18. For example, in that policy, the University spells out the training it gives its employees and designees involved in the investigation or adjudication of alleged violations of the policy. This training makes no mention of protecting any rights of the accused:

Training of University parties. All University employees or designees involved in the investigation or adjudication of alleged violations of this policy will receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking and the process for conducting an investigation and hearing that protects the safety of complainants and promotes accountability of members of the University community.

19. Additionally, Policy GE2031 states that the University will make all reasonable efforts to resolve or conclude the investigation and resolve the complaint within sixty calendar days. It states:

Time Frames. All time frames expressed in this policy are meant to be guidelines rather than rigid requirements. Every reasonable effort shall be made to conclude the investigation and resolve the complaint within sixty (60) calendar days following receipt of the complaint. Within this sixty (60) day time frame, it is expected that the Investigator will conclude the investigation, prepare a written report and finding, and notify the parties in writing of the determination. This timeframe does not include any appeal as the result of a request by either party. If an appeal hearing is requested, every reasonable effort shall be made to conclude the appeal process within thirty (30) days following the University's receipt of the appeal request. If the Investigator or Hearing Officer determines that additional time is needed, both parties shall be notified in writing of the delay, the anticipated date that the investigation or hearing will be concluded, and the reasons for such delay. If either party determines that additional time is needed, that party shall request such in writing to either the Investigator (if no initial determination has been

made) or Hearing Officer (if a request for hearing has been received by the institution). The written request for additional time shall include the reasons for the requested delay and the number of additional days needed.

20. The fact that these policies contained no protections for the rights of the accused was compounded by the way the investigation into this incident was conducted. First, the Plaintiff gave a statement to the University of Memphis after he was released from jail. In that statement he denied raping Jane Roe. He also provided to the University of Memphis investigators the name and contact information for the only witness to the event, Christian Johnson. The University of Memphis investigators failed to follow up with this witness, failed to take a statement or even call.
21. Once an interview was conducted of the Plaintiff by the investigators for the University of Memphis, it was clear they had the wrong date or had been given the wrong date for this alleged incident. This matter was corrected only after the Plaintiff himself, advised the University of Memphis that their information was incorrect, demonstrating his cooperation with the University's process.
22. After a meeting with Kenneth Anderson, the Title IX coordinator, and Natasha Dexter, no decision was rendered by the University of Memphis within sixty days of the Notice of Complaint. As of this date, there has never been a decision regarding this Notice of Complaint. Therefore, the Plaintiff has been unable to appeal for over twenty months. Nonetheless, during the time this matter has been pending, all of the so-called "interim restrictions" put in place have been applied for the entire time period and have never been rescinded. The specific restrictions were:
 - 1) The Plaintiff has been barred from physically being on the campus of the University of Memphis;

- 2) He has been barred from taking any classes other than through remote means;
 - 3) He has been barred from taking in person exams
 - 4) His financial aid agreement was cut off, leaving him without money and means to pay any of his expenses;
 - 5) Kicked off the football team.
23. These restrictions have had a devastating effect on the Plaintiff; first the press release of the University of Memphis was rebroadcast around the country, effectively branding the Plaintiff has a rapist. Secondly after publishing this accusation, the Plaintiff's opportunities for an NFL career vanished: he stopped receiving any interest regarding potential senior bowl invites or any other activities which could have brought him a career path into the NFL.
24. The Plaintiff finally received a Master of Business Administration degree through his online study at the University of Memphis, which he completed on his own without the financial aid he was promised by the University. However, he was unable to gain employment using that degree due to the stigma of the rape allegation published by the University of Memphis. The Plaintiff has been forced to obtain employment at below the salary his educational level would demand in the open market if not for the public shaming conducted by the University of Memphis from its press releases and ostracization. The press release from the University regarding this case and the Title IX investigation was rebroadcast and disseminated through national wire services and national internet news agencies, giving it wide circulation and spreading the image of the Plaintiff as a rapist nationwide.²

3. The University of Memphis' Response to a White Male Student Accused of Rape is Markedly Different than the Response to the Charge involving the Plaintiff

² https://www.espn.com/college-football/story/_/id/21023263/ernest-suttles-memphis-tigers-charged-rape-dismissed-team

25. The University of Memphis has not acted punitively and arbitrarily against other students that have been accused of rape. Sadly, this divergent approach by the University has been applied on the basis of the race of the accused. In an identical case, a 20 year-old white male student was allowed to attend classes after an incident in which he was accused of raping another student, which allegedly happened in a private home in April 2017. He specifically was allowed to attend classes after he was indicted in August 2017, unlike the Plaintiff. As of October 2017, he was still allowed to attend classes in person and was not subject to the “interim measures” the University of Memphis employed against Suttles.³

26. In fact, the statement the University of Memphis issued in response to this rape allegation against a white male was markedly different than the one issued when a black man, (i.e., the Plaintiff) was accused of rape. The statement in the case involving a white male alleged assailant issued by U of M President David Rudd, in the midst of campus protests against this student’s presence on campus, was as follows:

Dear Campus Community:

It is deeply disturbing whenever there are reports of potential criminal behavior that involve and impact our students and our campus. The safety of our students, and all on our campus, is paramount. When reports of potential criminal behavior emerge, the University of Memphis follows a deliberate series of steps to ensure safety, guard confidentiality of all involved, and allow for due process. In all reports of potential criminal behavior, we encourage and support the reporting party to pursue criminal charges, related potential investigation and potential prosecution. In cases where criminal charges are filed and an investigation is initiated by the local police for incidents that occur off campus, the UofM is dependent on the findings of that investigation in order to take action if one of our students is involved. A complainant can choose to hold their campus matter in abeyance while the criminal matter is proceeding. When evidence emerges and the fact pattern is established, the UofM is able to take definite action consistent with the legal requirement of due process. Over the past several years we have removed students from our campus when the evidence and fact pattern supports such an action. We will certainly

³ <https://www.commercialappeal.com/story/news/crime/2017/10/12/alleged-rape-cases-roil-university-memphis-campus/756565001/>

continue to do so, but we will also do so in accordance with local, state and federal laws.

While investigations are being completed and evidence gathered, either on campus or by the local police, the University of Memphis provides support, services and a range of resources to those impacted by potential criminal behavior. We are a community and country governed by the rule of law, and we will follow those laws and provide due process throughout. When the facts of investigations are established and evidence gathered, we have not hesitated to take the harshest position possible for criminal activity on our campus. The University of Memphis will continue to do so. If you have questions or concerns, please do not hesitate to reach out.

Regards,

M. David Rudd
President/Distinguished University Professor

27. These “respect the rule of law” comments were absent in the press release regarding the arrest of Ernest Suttles. The commitment to due process, expressly stated in this release is conspicuously absent in the press release regarding Ernest Suttles. The Statement in full was as follows:

“...Ernest Suttles has been dismissed from the University of Memphis football team for a violation of team rules in an off campus incident. As was communicated in an earlier statement, Settles has been removed from campus while this matter is reviewed by the Office of Student Accountability, Outreach and Support for violations of the UofM Student Code of Conduct. During the ongoing investigation, no additional comments will be made...”

28. This statement ended Ernest Suttles football career forever and branded him as a rapist without the presumption of innocence.

COUNT I

Violation of Title IX of the Education Amendments of 1972

29. Plaintiff repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.

30. Title IX of the Education Amendments of 1972 provides, in relevant part, that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”
31. Title IX of the Education Amendments of 1972 applies to all public and private educational institutions that receive federal funding, which includes Defendant University of Memphis.
32. The University of Memphis is part of the Tennessee State Board of Regents Systems, with its principal administrative offices in Knoxville, Tennessee. The University of Memphis is authorized, supervised and funded by the State of Tennessee pursuant to the Tennessee Constitution. It is also funded by the Federal Government and received
33. Students attending public universities such as the University of Memphis who have been accused of sexual misconduct, have a right to due process under Title IX. See U.S. Dep’t of Education, Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties -- Title IX (2001) at 22 (the “2001 OCR Guidance”); April 2011 Dear Colleague Letter at 12.
34. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to “adopt and publish grievance procedures providing for the prompt and equitable resolution of student... complaints alleging any action which would be prohibited by” Title IX or regulations thereunder. 34 C.F.R. § 106.8(b) (Dep’t of Education); 28 C.F.R. § 54.135(b) (Dep’t of Justice) (emphasis added). Such prohibited actions include all forms of sexual harassment, including sexual intercourse, sexual assault, and rape.⁴

⁴ See generally U.S. Dep’t of Education, Office for Civil Rights, Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties -- Title IX (2001) at 19-20, 21 & nn. 98-101.

35. The “prompt and equitable” procedures that a school must implement include, at a minimum:

- i. “Notice . . . of the procedure, including where complaints may be filed”;
- ii. “Application of the procedure to complaints alleging [sexual] harassment...”;
- iii. “Adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence”;
- iv. “Designated and reasonably prompt timeframes for the major stages of the complaint process”; and
- v. “Notice to the parties of the outcome of the complaint.....”

36. Title IX Coordinators should not have a conflict of interest. “For example, serving as Title IX coordinator and a disciplinary hearing board member may create a conflict of interest.” April 2011 Dear Colleague Letter at 7; August 2015 Dear Colleague Letter at 2-3.

37. Title IX may be violated by a school’s imposition of university discipline where race is a motivating factor in the decision to discipline.

38. In this case the University of Memphis breached its duties to the Plaintiff under Title IX. It committed a series of acts which brazenly violated the Plaintiff’s rights and caused him damage which continue as of the date of the filing of this Complaint.

39. The University of Memphis breached the duty to the Plaintiff by failing to complete the investigation of this complaint within sixty days, as required by its own policy and by the provisions of Title IX. Once the Plaintiff received a Notice of Complaint in October 2017, the University had a responsibility under Title IX and its own policy to designate reasonably prompt timeframes for the major parts of the investigation. Its own policy sets out sixty days as the amount of time allotted for this investigation and resolution. It failed to meet this requirement as the investigation was never concluded. There has been no written finding issued to the Plaintiff.

40. The University never conducted a fair and thorough investigation of the Complaint. As noted previously, there was only one possible eyewitness who could have been interviewed, Christian Johnson. However, for whatever reason the University of Memphis' investigators and Title IX Coordinator Kenneth Anderson never contacted this witness. The failure to even interview or place a telephone call to the only potential witness to the event renders any investigation incomplete on a basic and fundamental level.
41. Additionally, the University of Memphis never conducted a hearing of this Title IX complaint, in blatant violation of the Act. As a result of this failure to conduct a hearing, the Plaintiff was not allowed to attend the hearing wherein the Complainant testified, and he did as well. He was not allowed the opportunity to hear the testimony or the statement given by Jane Roe. He was not allowed to have his counsel present at a hearing to confront his accuser or cross-examine her statement. The failure to conduct a hearing denied the Plaintiff of the fundamental bedrock principle of due process. The University of Memphis' policy simply ignored this right.
42. The University of Memphis violated Title IX by employing the "interim sanctions" against Ernest Suttles without the benefit of a hearing or an opportunity to defend himself against the charges. As noted previously within hours of being arrested and before the Notice of Complaint was issued on Monday October 17, 2017 the University kicked Mr. Suttles off the Football team. His financial aid was therefore cut before he could post his bond and leave jail during that first 48 hours after being arrested. All of this was in clear violation of the financial aid agreement and denied him the due process that Title IX guaranteed him.⁵

⁵ Although Mr. Suttles received the Notice of Complaint on the Monday following the Memphis-Navy Football game, it is clear that the decision to deny him due process was made earlier. The date of the Notice of Complaint was issued and signed by Kenneth Anderson was October 14, 2017, even before Suttles was aware of the charge.

43. Based on the foregoing, University of Memphis failed to conduct an adequate, reliable, and impartial investigation of Jane Roe's complaint. Due to this failure to conduct an adequate, reliable and impartial investigation, the Plaintiff suffered damages, which include but are not limited to, psychological damages and counseling and treatment expenses, loss of his financial aid and income, embarrassment and humiliation due to his banishment from the University and other damages to be enumerated at trial.

COUNT II

42 U.S.C. §1983: Denial of Fourteenth Amendment Due Process

44. Plaintiff repeats and realleges each and every allegation hereinabove as if fully set forth herein.

45. The University of Memphis was responsible for implementing the Student Conduct Code, and enforcing the financial aid agreement and adhering to NCAA regulations which were incorporated by reference into that agreement with the Plaintiff. Additionally, it was responsible for providing the Plaintiff due process under Title IX in regard to the Notice of Complaint.

46. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." A similar right is stated in the Fifth Amendment to the United States Constitution.

47. Section 1983 of Title 42 of the U.S. Code provides in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

48. A person has a protected property interest in pursuing his education, as well as in future educational and employment opportunities and occupational liberty, of which he cannot be deprived without due process.
49. Plaintiff's constitutionally protected property interest in his continued enrollment at University of Memphis and to be free from arbitrary suspension and dismissal arises from the policies, courses of conduct, practices and understandings established by University of Memphis.
50. Plaintiff's constitutionally protected property interest further arises from the express and implied contractual relationship between University of Memphis and Plaintiff.
51. It is well established that Fourteenth Amendment due process protections are required in higher education disciplinary proceedings.
52. University of Memphis, a state university, is part of a system of public universities created by the State of Tennessee and administered by the State Board of Regents. The University of Memphis is authorized, supervised and funded by the State of Tennessee. Therefore, the University of Memphis has a duty to provide its students equal protection and due process of law by and through any and all procedures set forth by the University.
53. Plaintiff had obeyed all institutional rules when he was wrongly suspended from University of Memphis and the University of Memphis football team.
54. In resolving the Notice of Complaint filed herein, the Plaintiff was entitled to a process commensurate with the seriousness of the allegations and the potential discipline, sanctions, and repercussions he was facing. Plaintiff was deprived of a fundamentally fair process. Plaintiff's right to due process was violated when the University of Memphis suspended him without notice and a hearing due to the complaint of Jane Roe, and punished him and publicly branded him as a rapist and a violator of team rules.

55. The University of Memphis deprived Plaintiff of his liberty and property interests without affording him basic due process, including but not limited to, his right to be notified of the charges against him, his right to a fair adjudication, his right to be heard by an impartial factfinder, to question his accuser and to have a speedy and prompt resolution of the charges against him within a reasonable amount of time. The liberty and property interests include but was not limited to the restriction of his ability to enter and move about a public university campus, the deprivation of his financial aid, to which he had a contractual right to be awarded, and the loss of any and all rights and privileges he was entitled to enjoy as a student athlete at the University of Memphis.

56. As a direct and foreseeable consequence of the foregoing deprivations of due process, Plaintiff sustained damages, including, without limitation, loss of educational and career opportunities, economic injuries and other direct and consequential damages as outlined previously in this Complaint. Specifically the Plaintiff has been damaged by a) the loss of financial aid which he was entitled to as a result of his financial aid agreement, in an amount to be proven at trial; 2) the loss of employment opportunities from his attaining the Masters of Business Administration Degree, due to the public branding of him as a rapist by the University of Memphis; 3) the loss of any hope of a career as a result of being kicked off the football team at the University of Memphis as a senior, literally months before the pro day and senior bowl honors; 4) counseling and therapy costs incurred as a result of being traumatized by the conduct of the University of Memphis; and 5) any and all other damages in any amounts to be proved at trial.

COUNT III
Breach of Contract Against University of Memphis

57. Plaintiff repeats and re-alleges each and every allegation hereinabove as if fully set forth herein.
58. At all times relevant hereto, a contractual relationship existed between University of Memphis and Plaintiff through a) the Plaintiff's Financial Aid Agreements with the University of Memphis; and b) University of Memphis's policies and procedures governing the student disciplinary system, including but not limited to the Student Conduct Code and the University of Memphis Sexual Harassment Policy, GE2031.
59. Through the documents it publishes and provides to students, University of Memphis makes express contractual commitments to students involved in a disciplinary process, as well as in this case, student athletes with financial aid agreements. One specific commitment is to fulfill the financial aid obligations and not cease those payments unless and until the student athlete has been afforded due process as required by that agreement, and the applicable NCAA regulations.
60. Based on the foregoing, University of Memphis created express and implied contracts with Plaintiff that he would be afforded due process before being removed from financial aid and before suffering any interim restrictions such as those employed in this case.
61. Based on the aforementioned facts and circumstances, University of Memphis breached express and/or implied agreement(s) with Plaintiff by the commission of the following acts: a) it suspended the Plaintiff from physically entering the campus of the University of Memphis without notice and a hearing, when such restriction was not warranted or necessary under the circumstances; especially when the Plaintiff had no classes with the complainant and did not even attend classes in the same building at any time; b) when it cut off the Plaintiff's financial aid, in violation of the financial aid agreement which specifically granted him due process; 3)

when it failed to provide due process by conducting a hearing on the complaints of Jane Roe; and d) when it failed to investigate these charges which would include interviewing the Plaintiff's exculpatory witness.

62. As a direct and foreseeable consequence of the foregoing breaches, Plaintiff sustained damages, including, without limitation, loss of educational and career opportunities, economic injuries and other direct and consequential damages as outlined previously in this Complaint. Specifically the Plaintiff has been damaged by a) the loss of financial aid which he was entitled to as a result of his financial aid agreement, in an amount to be proven at trial; 2) the loss of employment opportunities from his attaining the Masters of Business Administration Degree, due to the public branding of him as a rapist by the University of Memphis; 3) the loss of any hope of a career as a result of being kicked off the football team at the University of Memphis as a senior, literally months before the pro day and senior bowl honors; 4) counseling and therapy costs incurred as a result of being traumatized by the conduct of the University of Memphis; and 5) any and all other damages in any amounts to be proved at trial.
63. As a result of the foregoing, Plaintiff is entitled to damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, Plaintiff demands judgment against Defendants as follows:

1. On the first count for violation of Title IX of the Education Amendments of 1972, a judgment against University of Memphis awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of

educational opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements and an injunction against University of Memphis as a result of University of Memphis's violation of Title IX, which resulted in an unduly severe and unwarranted sanction which continues to injure Plaintiff's reputation and right to continue his education, an injunction should issue directing University of Memphis to:

- (i) expunge Plaintiff's disciplinary record;
- (ii) remove any record of Plaintiff's suspension from his education file;
- (iii) permanently destroy any record of Jane Roe's complaint; and

2. On the second count for violation of constitutional due process under 42 U.S.C. § 1983, an injunction directing the University of Memphis and Kenneth Anderson, Title IX Coordinator to

- (i) expunge Plaintiff's disciplinary record;
- (ii) remove any record of Plaintiff's suspension from his education file; and
- (iii) (iii) permanently destroy any record of Jane Roe's complaint;

3. On the third count for state law breach of contract, a judgment against University of Memphis awarding Plaintiff damages in an amount to be determined at trial, including, without limitation, damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational opportunities, and loss of future career prospects, plus prejudgment interest, attorneys' fees, expenses, costs and disbursements;

4. An award to the Plaintiff of such other and further relief as the Court deems just, equitable and proper.

JURY DEMAND

Plaintiff herein demands a trial by jury of all triable issues in the present matter.

RESPECTFULLY SUBMITTED,

JOHNSON & JOHNSON, P.L.L.C.

A Professional Limited Liability Company

A handwritten signature in black ink, appearing to read 'C.D. Johnson, Jr.', with a stylized, cursive script.

/s/Curtis D. Johnson, Jr.

CURTIS D. JOHNSON, JR. (Bar No.015518)
Suite 1002, 1407 Union Avenue
Memphis, Tennessee 38104
Telephone: (901) 725-7520
Facsimile: (901) 725-7570
cjohnson@johnsonandjohnsonattys.com

A handwritten signature in black ink, appearing to read 'F. Johnson', with a stylized, cursive script.

/s/Florence J. Johnson

FLORENCE M. JOHNSON
Suite 1002, 1407 Union Avenue
Memphis, Tennessee 38104
Telephone: (901)725-7520
Facsimile: (901)725-7570
fjohnson@johnsonandjohnsonattys.com

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Ernest Suttles

(b) County of Residence of First Listed Plaintiff Shelby*(EXCEPT IN U.S. PLAINTIFF CASES)*(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Curtis D. Johnson Jr. Suite 1002, 1407 Union Ave. Memphis, Tennessee

DEFENDANTS

University of Memphis

County of Residence of First Listed Defendant Shelby*(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)***II. BASIS OF JURISDICTION** *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
Title 9 of the Education Amendments of 1972Brief description of cause:
Denial of Due Process and Title 9**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY***(See instructions):*

JUDGE

DOCKET NUMBER

DATE
08/05/2019SIGNATURE OF ATTORNEY OF RECORD
/s/Curtis D. Johnson, Jr.**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**


The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

Western District of Tennessee 

Ernest Suttles

Plaintiff(s)

v.

University of Memphis

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* University of Memphis
 c/o General Legal Counsel
 Melanie Murry
 201 Administration Bldg
 Memphis, Tennessee 38152

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Curtis D. Johnson, Jr.
 Johnson and Johnson PLLC
 Suite 1002, 1407 Union Avenue
 Memphis, Tennessee 38104

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: